

9 April 2009

Received & Inspected

APR 14 2009

FCC Mail Room

Federal Communications Commission  
Office of the Secretary  
445 - 12th Street, SW  
Room TW-A325  
Washington, DC 20554

Re: 499 Filer ID #826773  
CC Docket No. 96-45  
WC Docket No. 06-122  
Appeal of USAC Decision

Dear Madame Secretary:

Aspire Telecom, Inc. (ATI) appeals the decision of the Universal Service Administrative Company (USAC) dated February 11, 2009, denying ATI's request to waive the 45-day deadline for correcting its May 2008 499-Q report. ATI is also appealing USAC's invoice numbers [7/22/08, Invoice UBDI0000313642; 8/22/08, Invoice UBDI0000318633; 9/22/08, Invoice UBDI0000323596; 10/22/08, Invoice UBDI0000328544; 11/21/08, Invoice UBDI0000333507; 12/22/08, Invoice UBDI0000338142; 1/23/09, Invoice UBDI0000343268; 2/20/09, Invoice UBDI0000348229 and 3/20/09, Invoice UBDI0000353017] and requests that the late payment fees and interest charges reflected in the invoices be abated, in addition to the USF contributions reflected in the invoices. A copy of the USAC decision is attached for convenient reference.

The USAC decision does little more than restate the rule establishing the 45-day deadline for submitting revised Form 499-Q reports and does not address the substance of ATI's request for waiver. A copy of ATI's waiver request (exclusive of confidential attachments) also is enclosed for convenient reference. Therefore, ATI respectfully requests on appeal that the Commission address the substance of ATI's request for waiver of the 45-day rule, and that its waiver request be granted, and that the USF contributions, late payment fees and interest charges reflected in the above-referenced invoices be abated.

Respectfully submitted,



Adam Kane  
President

cc: Regina Dorsey, FCC Office of Managing Director  
Hillary DeNigro, FCC Enforcement Bureau  
Trent Harkrader, FCC Enforcement Bureau  
Greg Guice, FCC Wireline Competition Bureau

No. of Copies rec'd 0  
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888-2ASPIRE

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*AK Copy*

15 October 2008

Universal Service Administrative Company  
Attn: Billings, Collections and Disbursements  
2000 L Street, NW  
Suite 200  
Washington, DC 20036

**EMERGENCY REQUEST FOR WAIVER OF USAC 45 DAY REVISION  
DEADLINE AND ACCEPTANCE OF CORRECTED FORM 499Q REPORT  
DATED 4/30/2008**

Re: 499 Filer ID #826773  
Aspire Telecom, Inc.  
CC Docket No. 96-45

**To Whom It May Concern:**

We are writing today to submit a revised 499Q to replace the incorrect 499Q we filed on 4/30/2008 (i.e., the "May 2008 499Q").

We realize that this amendment is being filed after the 45-day amendment window and are asking USAC to waive that deadline and accept the corrected report for filing based on the following:

1. We are a real newcomer to these filings, having only begun late, late last year. Nor are we a large company able to hire staff having experience and expertise in regulatory compliance and reporting. There are only 4 of us, total, to cover all areas of responsibility. As such our experience with completing these forms was and is extremely limited.
2. Aspire Telecom is a re-seller of local exchange telephone service. That's all we do and we are 100% resale. We provide pre-paid local exchange service to the poor and credit disadvantaged people of North and South Carolina only. As an adjunct to local service, we offer pre-paid long distance to our customers. The ONLY inter-state revenue we receive is that portion of the long distance usage of our customers when they make inter-state long distance calls. Only about 17% of our local service customers also subscribe to long distance and only about 23% of the revenue we collect from them is for their long distance subscription. We have no way of knowing what percent of their long distance calls are inter-state verses intra-state as we do not receive detail billing records for those customers. We sell them pre-paid blocks of minutes for a set price. Our best estimate is that no more than 19% of their total calls are inter-state. Using these percentages our total revenue that can be attributed to interstate activities is about \$1,900 for the first quarter of 2008.
3. Because of our lack of expertise and our inexperience with your forms we innocently made a mistake and listed our total quarterly revenue, the huge majority of which is intra-state, as inter-state revenue. However, because of the consequences resulting from that mistake we have learned and have put in place measures to ensure that such a filing error will not occur in the future.

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4. We only learned what that mistake was, i.e., the nature of the mistake, on Friday, 9/26/08 and we began preparing this request immediately thereafter. We have moved on this with all care and diligence.
5. Allowing us to correct this mistake will return us to the De Minimis status for which we were certified before the mistake and for which we have been re-certified on the basis of our August 499Q report, filed subsequent to the mistake.
6. A return to De Minimis standing for the affected quarter will eliminate all of the billings and we pray that on that basis, USAC will eliminate all of the late fees and penalties that resulted or will result from those billings.
7. It appears, from a successful appeal to the FCC from another company (Aventure communications Technology, L.L.C., CC Docket No. 96-45, WC Docket No. 06-122) who found themselves in an essentially identical situation, that the FCC has, just this year, established a precedent that will allow you to accept our revised submittal.
8. Since we are and have been a de minimis company we do not and have not billed our customers for USF fees. Nor would we be able to back-bill them for these fees should we be forced to pay the invoices we have already been sent without triggering a wholesale flight of customers leaving our services as a result.
9. Without relief from the billings, penalties and late fees which have and will apparently continue to accrue as a result of our innocent mistake on the May 499Q, great, irreversible and excessive harm and hardship will be done not only to our company but also to all of the poor and credit-disadvantaged customers to whom we provide local telephone service. If Aspire Telecom is forced to pay the currently levied and expected future levied charges the Company will simply and factually become insolvent long before we could recapture those funds in the 499-A true-up process - as by your own admission, that process will not provide redress until mid-2009 and not provide reimbursement until the 3<sup>rd</sup> quarter of 2009 - nearly a year from now. We simply are not well enough capitalized to bear this burden for that long a period. Nor, in the current banking "crisis" climate, do we have any hope of being able to find or arrange additional credit. In testimony of the truth of these statements we have attached an abstract of our financial statements for the year to date. Nor will retained earnings from the previous years help as we posted a net loss of over \$50,000 from 2007 and have an even larger negative balance of "retained earnings" over our entire history.
10. Approving this request for waiver of the 45 day rule and accepting our revised May 499Q will serve the public interest.

I certify that all the information contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue and risk information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commissions Rules.

I certify that I am an officer of the reporting entity, that I created this letter and declare under penalty of perjury that to the best of my knowledge, information and belief, all statements of fact contained in this document are true and are an accurate statement of the affairs of the Company.

In closing we request a waiver of the May 499Q revision deadline and ask you to accept the attached revised May 499Q report for filing.

Respectfully submitted,

R. Adam Kane  
President

Cc: file, Mr. Fred Theobald, USAC

Encl: revised May 2008 FCC FORM 499-Q, ~~abstract of financials, Aventure~~  
~~decision.~~  
*not included* *Confidential &*  
*not included*

# FCC Form 499-Q Telecommunications Reporting Worksheet

Quarterly Filing for Universal Service Contributors

>>> Please read instructions before completing <<<

Approval by OMB  
3060-0855

## Block 1: Contributor Identification Information

102	Legal name of reporting entity	ASPIRE TELECOM, INC
103	IRS employer identification number	56-2136467
104	Name telecommunications provider is doing business as	ASPIRE TELECOM
105	Holding company [All affiliated companies should show same name here.]	N/A
106	FCC Registration Number (FRN)	001 645 4087
107	Complete mailing address of reporting entity's corporate headquarters	207 ELK PARK DR ASHEVILLE NC 28804

## Block 2: Contact Information

108	Person who completed this worksheet	First ROBERT M A Last KANE
109	Telephone number of this person	(323) 256 0406
110	Fax number of this person	( ) 236 0418
111	Email of this person	akane@aspiretelecom.com
112	Billing address and billing contact person: [Bills for Universal Service contributions will be sent to this address.]	same as above

## Block 3: Contributor Historical and Projected Revenue Information

113	Year of historical revenue information	Filing due	Historical revenues for	Projected revenues for
114	Indicate which quarterly filing this represents	February 1 May 1 August 1 November 1	October 1 - December 31 (prior year) January 1 - March 31 April 1 - June 30 July 1 - September 30	April 1 - June 30 July 1 - September 30 October 1 - December 31 January 1 - March 31 (following calendar year)
115	Telecommunications provided to other universal service contributors for resale as telecommunications or as interconnected VoIP	0	Total Revenues (a)	Interstate Revenues (b)
116	End-user telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues	255,902	Revised Amount (estimated)	1,900
117	All other goods and services		Column (b) and (c) not requested	
118	Gross-billed revenues from all sources [sum of above]		for Lines 117 and 118	
119	Projected gross-billed end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		204,721	1,800
120	Projected collected end-user interstate and international telecommunications revenues including any pass-through charges for universal service contributions, but excluding international-to-international revenues		204,721	1,800

## Block 4: CERTIFICATION: to be signed by an officer of the reporting entity

121	I certify that the revenue data contained herein are privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules.	<input checked="" type="checkbox"/>
122	I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true, that said Worksheet is an accurate statement of the affairs of the above-named company for the quarter end and that the projections of gross-billed and collected revenues represent a good-faith estimate based on company procedures and policies.	
123	Signature	R. Adam Kane
124	Printed name of officer	First ROBERT M A Last KANE
125	Position with reporting entity	PRESIDENT
126	Email of officer    Required if available	same as above
127	Date	4/30/2008
127	This filing is:	Original filing <input checked="" type="checkbox"/> Revised filing [revisions due within 45 days of original filing deadline]

Do not mail checks with this form. Send this form to: Form 499 Data Collection Agent c/o USAC 2000 L Street, N.W. Suite 200 Washington DC, 20036  
For additional information regarding this worksheet contact: Telecommunications Reporting Worksheet Info: (888) 641-8722 or via e-mail: Form499@universalservice.org

PERSONS WILLFULLY MAKING FALSE STATEMENTS IN THE WORKSHEET CAN BE PUNISHED BY FINE OR IMPRISONMENT UNDER TITLE 18 OF THE UNITED STATES CODE, 18 U.S.C. §1001

Save time, avoid problems - file electronically at

<http://forms.universalservice.org>

FCC Form 499-Q  
February 2008



Administrator's Decision on Contributor Appeal

By Certified Mail

February 11, 2009

*Confidential – Not for Public Inspection*

Mr. R. Adam Kane  
President  
Aspire Telecom, Inc.  
207 Elk Park Drive  
Woodfin, NC 28804

Re: Aspire Telecom, Inc. (Filer ID #826773)  
Letter of Appeal received October 15, 2008

Dear Mr. Kane:

The Universal Service Administrative Company (USAC) has completed its evaluation of the appeal submitted on behalf of Aspire Telecom, Inc. (Aspire), dated October 15, 2008. The appeal requests acceptance of a late-filed revised May 2008 FCC Form 499-Q (May Form 499-Q). As discussed in more detail below, USAC hereby denies Aspire's appeal.

Decision on Appeal: Denied

Federal Communications Commission (FCC or Commission) regulations require telecommunications carriers to file an annual FCC Form 499-A. In addition, carriers are also required to file quarterly Form 499-Qs, unless they meet the *de minimis* exemption.<sup>1</sup> USAC relies on projected revenue for the upcoming quarter reported on the Form 499-Q to bill contributors and relies on the annual Form 499-A to reconcile billings for the previous year, as projected on the Form 499-Qs. *See generally*, 47 C.F.R. Part 54.

The FCC requires Form 499-Qs to be filed on the first business day of the following months: November, February, May and August. The November Form 499-Q is used to determine a company's monthly Universal Service Fund (USF) contribution obligation for January, February and March of the next calendar year; the February Form 499-Q is used to determine a company's monthly USF contribution obligation for April, May and June of the calendar year; the May Form 499-Q is used to determine a company's monthly USF contribution obligation for July, August and September of the calendar

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<sup>1</sup> See 47 C.F.R. § 54.708.

year; and the August Form 499-Q is used to determine a company's monthly USF contribution obligation for October, November and December of the calendar year.<sup>2</sup>

The FCC has stated that timely filing of the FCC Form 499 is an essential administrative requirement that serves the public interest, and which the FCC relies upon in order to determine the quarterly USF contribution factor.<sup>3</sup> The FCC recently explained that it established a 45-day revision window to give contributors an opportunity to revise their quarterly forms while adequately maintaining appropriate USF funding in a given quarter.<sup>4</sup> In all cases, it is the contributor's obligation to ensure filings are made in a timely manner.

The May Form 499-Q, which reported projected revenue for the third quarter of 2008, had a due date of May 1, 2008 and a 45-day revision deadline of June 16, 2008. Aspire filed a May Form 499-Q on May 5, 2008 and, along with its October 15, 2008 appeal, submitted a revision to that form after the 45-day revision deadline had expired. Accordingly, Aspire's revised May Form 499-Q is hereby rejected.

As required by FCC rules,<sup>5</sup> USAC relied on projected revenue provided by on Aspire on its original Form 499-Q to calculate its monthly USF contribution obligation of \$6,944.82, which posted to Aspire's July, August and September 2008 invoices. Because Aspire's July, August and September 2008 monthly USF contribution obligation was based on projected revenue reported by Aspire on its May 2008 Form 499-Q, USAC correctly billed Aspire. Accordingly, Aspire's appeal is hereby denied.

USAC wishes to advise Aspire that it will be required to file a 2009 FCC Form 499-A (2009 Form 499-A) reporting 2008 annual revenue. USAC will rely on the annual revenue reported on the 2009 Form 499-A to review Aspire's 2008 USF contribution

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<sup>2</sup> See *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, CC Docket No. 96-45, Report and Order and Order on Reconsideration, FCC 01-85, 16 FCC Rcd. 5748 (2001) (*Quarterly Reporting Order*).

<sup>3</sup> *In the Matter of Request for Review by Atlantic Digital, Inc. of Decision of Universal Service Administrator*, CC Docket No. 96-45, DA 05-520, Order, 20 FCC Rcd. 4224, 4225-26, ¶¶ 3, 5 (2005) (*Atlantic Digital*).

<sup>4</sup> See *Federal-State Joint Board on Universal Service, Request for Review by: ABS-CBN Telecom North America, Incorporated of Decision of Universal Service Administrator; Southwest Communications, Inc. of Decision of Universal Service Administrator; and Trans National Communications International, Inc., Decision of Universal Service Administrator*, CC Docket Nos. 96-45, 2007 WL 784322, DA-07-1276 (2007) (*USF Reconciliation Process Order*), ¶ 2 ("Beginning in 2003, contributors have had the opportunity to correct their quarterly filings up to 45 days after the due date of each FCC Form 499-Q filing. In addition, all filers must submit an annual Telecommunications Reporting Worksheet (FCC Form 499-A), which contains the filer's actual revenues from the previous calendar year. To the extent that contributors have under- or overestimated their revenue information and have paid too little or too much, the FCC Form 499-A is used to true-up universal service billings and payments.").

<sup>5</sup> See 47 C.F.R. § 54.709 (a).

obligation, including the July, August and September 2008 billings at issue in the appeal.<sup>6</sup> Assuming but not concluding, that Aspire's billings should be adjusted, Aspire will receive adjustments or credits, as appropriate beginning in July 2009.

#### Pay and Dispute Policy

The FCC, in its *Comprehensive Review Order*,<sup>7</sup> directed USAC to assess late fees on all unpaid balances. It is USAC's policy to enforce any late payment fees associated with unpaid balances. It is the responsibility of the contributor to file correct revenue so that USAC may accurately assess USF contribution obligations. Failure to pay USF contribution amounts when due will result in late charges being assessed on the amount outstanding.

USAC records indicate Aspire has not paid its balance due in full and received late fees of \$52.31, \$50.64, \$256.01, and \$336.11 which posted to its account in September, October, November and December 2008, respectively.<sup>8</sup> USAC wishes to advise Aspire that it will continue to receive late fees and penalties until its account is paid in full.

The "Frequently Asked Questions" section of USAC's website provides guidance that specifically advises contributors that intend to file revisions to pay charges or risk receiving late payment fees. Further, the USAC website explains that USAC must rely on the contributor to deliver accurate information and that billings are based on the revenue as reported. The USAC website explains that late payment fees will not be waived unless the dispute is determined to be the result of a USAC error.<sup>9</sup>

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<sup>6</sup> See *Interim Contribution Methodology Order*, ¶ 36 ("USAC will use the actual revenue data provided by contributors on the FCC Form 499-A to perform annual true-ups to the quarterly projected revenue data submitted by contributors during the prior calendar year.").

<sup>7</sup> *In the Matter of Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Report and Order*, FCC 07-150, WC Docket No. 05-195, et al., 22 FCC Rcd. 16372, ¶ 14 (2007) (*Comprehensive Review Order*), citing 47 C.F.R. § 54.713.

<sup>8</sup> See *Debt Collection Improvement Act of 1996*, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (1996).

<sup>9</sup> See USAC website section titled "Paying USAC Bill during Appeal Process" at: <http://www.usac.org/fund-administration/contributors/file-appeal/>.



Mr. R. Adam Kane  
Aspire Telecom, Inc.  
February 11, 2009  
Page 4 of 4

If you wish to appeal this decision, you may file an appeal with the FCC. Detailed instructions for filing appeals are available at:

<http://www.universal-service.org/fund-administration/contributors/file-appeal>

Sincerely,

*USAC*

cc: Regina Dorsey, FCC Office of Managing Director  
Hillary DeNigro, FCC Enforcement Bureau  
Trent Harkrader, FCC Enforcement Bureau  
Greg Guice, FCC Wireline Competition Bureau